

In 1952 the appellant instituted proceedings by Suit No. 1280 claiming for a declaration that the indentures of conveyances, the subject matter of the 1931 Suit, were fraudulent and void as against the appellant in so far as they purported to convey the land in dispute.

The question of *res judicata* arose out of the 1931 proceedings.

Held: (1) estoppel is limited to parties to the proceedings and their privies in estate; (2) in this case the sale by the mortgagees had been completed before these proceedings and their predecessors in title who owned the land at the time of the proceedings were not parties; (3) the respondents could not raise the question of estoppel either as parties or privies.

Case referred to:—

- (1) *Mercantile Investment etc. v. River Plate Trust etc.* (1894) 1 Ch. 578 at p. 594.

#### CIVIL APPEAL.

C. H. Smith for the appellant.

Philip Hoalim for the respondents.

The judgment of the Court of Appeal was delivered by:—

**Murray-Aynsley, C.J.:**—This appeal dealt with a question of *res judicata*. The facts were as follows: The present plaintiff, the appellant, had many years ago mortgaged certain property to a Chettiar firm, M. R. M. S. Sockalingam Chettiar. On September 17th, 1930, these mortgagees exercised their powers of sale and sold the property in question to the predecessor in title of the present defendants, the respondents. The proceeds of sale were insufficient to satisfy the claims of the mortgagees, who in Suit No. 1416 of 1931 sued the appellant for the balance owing. The appellant entered an appearance and put in a defence in which he alleged, *inter alia*, that the sale was collusive. He did not join the present respondents. The mortgagees in reply joined issue. When the case came on for hearing a lawyer who had been representing the appellant obtained his discharge, irregularly according to the then rules. The appellant was absent. The mortgagees made a formal proof of their claim and obtained judgment.

In 1952 the appellant began proceedings against the respondents, who are the successors in title of the purchasers in 1931. The question of *res judicata* arises out of the proceedings in 1931. In spite of the course of events at the trial of the 1931 proceedings, that is to say, in spite of the fact that the issues were not decided after hearing evidence on their merits the appellant is undoubtedly bound by those proceedings, but the estoppel is limited to parties to the proceedings and their privies in estate. The present respondents were not parties to the 1931 proceedings. The sale by the mortgagees had been completed before these proceedings and their predecessors in title who owned the land at the time of these proceedings were not

parties. So that the respondents cannot raise the question of estoppel either as parties or as privies. If authority is needed it will be found in *Mercantile Investment and General Trust Co. v. River Plate Trust, Loan and Agency Co.*<sup>(1)</sup>, which is exactly in point. For that reason we allowed the appeal with costs.

*Appeal allowed.*

#### PUBLIC PROSECUTOR v. ABDUL SAMAD BIN AHMAD & ANOR.

[O. Cr. J. (Briggs, J.) March 6, 1953]

[K. L.—Criminal Application No. 3 of 1953]

*Contempt of Court—Publication of article while Police investigation going on—Principle upon which the Court regards publications as contempt—Proper procedure for instituting contempt proceedings.*

This was an application by the Public Prosecutor for writs of attachment against the editor, and the printer and publisher of the "Majlis" for contempt of Court. The newspaper had published a report of a motor car accident in which one Muniandy had knocked down a Malay school boy outside his school. The publication alleged that the driver was driving at an illegally high speed, and that he caused the accident by such speed, as shown by the brake marks and position of the car. It also called the attention of the public to the views of the U.M.N.O. Branch Committee relative to the need for traffic control at that Malay school and at all schools with premises abutting on to the public highway. After the publication, a Summons was issued against Muniandy to appear in a Magistrate's Court to answer a charge of negligent driving.

The application was first made by the Public Prosecutor *ex parte* for a rule nisi and certain points of law were discussed. The Court being satisfied that it had jurisdiction to hear the alleged contempt committed *ex facie* a Subordinate Court in relation to an impending criminal proceeding, granted leave for the application to be served on the respondents.

At the hearing *inter partes*, the respondents raised the defence that the publication did not amount in law to contempt unless proceedings were "pending". Further, on the facts, it was pointed out that the purpose of the publication was to draw attention to the views of the U.M.N.O. Branch Committee for more traffic controls.

Held: (1) following the general principle laid down by Wills, J. in *R. v. Parke*<sup>(6)</sup> and to some extent the special principle in *R. v. Davies*<sup>(10)</sup>, contempt would be committed where it was known at the time of the publication that police investigation was proceeding and that a prosecution was, at the very least, under consideration, even though no one has been officially accused of the offence; (2) the publication went further than merely calling attention to the need for special traffic controls at schools. It is clear that it was calculated to affect the course of proceedings then imminent.

Cases referred to:—

- (1) *Re Straits Times Press Ltd.* (1949) M.L.J. 81.
- (2) *R. v. Davies* (1906) 1 K.B. 32.
- (3) *R. v. O'Dogherty* (1848) 5 Cox C.C. 348.
- (4) *Porter v. R.* (1926) 37 C.L.R. 433.
- (5) *R. v. Parke* (1903) 2 K.B. 432.

- (6) *R. v. Daily Mirror & Ors., Ex p. Smith* (1927) 1 K.B. 845.
- (7) *R. v. Clarke & Anor., Ex p. Crippen* (1910) 103 L.T. 636.
- (8) *R. v. Evening Standard & Ors., Ex p. Director of Public Prosecutions* (1924) 40 T.L.R. 833.
- (9) *R. v. Hutchinson & Ors., Ex p. McMahon* (1936) 2 All E.R. 1514.
- (10) *R. v. Davies, Ex parte Delbert-Evans* (1945) 1 K.B. 435.
- (11) *R. v. Payne* (1896) 1 Q.B. 577.

## APPLICATION for Writs of Attachment.

*B. Sheldon* (Federal Counsel) for the applicant.  
*F. J. Woodward* for the respondents.

**Briggs, J. :** — This was an application for writs of attachment against the editor, and the company which is printer and publisher, of the "Majlis" newspaper for contempt of Court. At the conclusion of the hearing I granted a rule absolute against the editor with a proviso that the writ should not issue if within seven days he should pay a fine of \$100; I fined the company \$100, and I ordered both respondents to pay the Public Prosecutor's costs as between solicitor and client. I stated then that I would give my reasons in detail at a later stage.

On the 21st January, 1953, in front of the Malay School in Princes Road, Kuala Lumpur, an accident took place in which a motor-car driven by one Muniandy came into collision with a boy named Zainal bin Hashim, who was a pupil at the Malay School. On the same day the police began to investigate the matter with a view to possible proceedings against Muniandy. I was informed from the Bar, and it was not disputed, that the staff of the "Majlis" must have been aware of the investigation in question, since in the issue of that paper of the 22nd January they referred to the accident and to the late arrival of the police to investigate it. In the issue of the 23rd January there appeared on the front page an article in the following terms :—

"SCHOOL STUDENT MET WITH ACCIDENT AT  
PRINCES ROAD — U.M.N.O. KG. BHARU  
BRANCH TAKES ACTION.

Kuala Lumpur, today: In connection with the accident which befell a student of the Princes Road Malay School here at noon day before yesterday a Committee meeting was convened by the Kg. Bharu Branch of U.M.N.O. last night, which meeting decided to submit a demand to the Municipal and Police authorities for the provision of a special traffic control for school children.

The meeting was able to identify, in the course of its discussion, that the car which knocked down a junior student of the Princes Road Malay School day before

yesterday belongs to a member of the Municipal Council. Because of this the meeting considered that a demand should be made to the Municipal Council.

Further, the meeting recorded in its observation that the driver, an Indian, was driving the car at a speed higher than what is permitted by law in town and thus caused the accident. The observation was based on brake marks on the road, which indicated that the car was travelling so fast that it could not avoid the accident.

Another observation made by the meeting was about the position of the car at the time of the accident, which was right across the road, another evidence which strengthens the above observation that the driver was driving the car without regard to traffic laws. The meeting considered that only the provision of a special control by the Traffic Police at every school can check accidents such as that occurred day before yesterday — *Majlis Reporter*.

(Other decisions arrived at by the Kg. Bharu U.M.N.O. Branch Committee meeting will be published to-morrow. It should be noted that attention had already been drawn to the subject of the accident in our editorial yesterday. *Ed. Majlis*.)"

It was not disputed that the driver referred to in the article was Muniandy. On the conclusion of the investigation a summons was issued against Muniandy to appear in the Magistrate's Court and he was charged with negligent driving. The date of issue of the summons does not appear, but it was admittedly later than the publication of the article complained of, and it appears that it was issued at the normal time and in the normal course after completion of the investigation.

The matter first came before me on *ex parte* application for a rule *nisi*, and certain points of law were discussed. As regards procedure, it was submitted that this jurisdiction is strictly speaking neither criminal nor civil. If it were purely criminal, section 5 of the Criminal Procedure Code would make applicable by reference the Straits Settlements procedure, and, since there is none, the Straits Settlements Code would in turn make it necessary to apply the English procedure. That is now by way of application for leave to issue the writ, the application being served at the outset on the respondent. See R.S.C. O. XLIV r. 2 and O. LV rr. 2 and 3. If the matter were purely civil, the procedure would presumably be by originating summons under section 472 of the Civil Procedure Code. I am of opinion, however, that the matter is neither criminal nor civil in the ordinary sense, but forms part of the special jurisdiction of the Court conferred by paragraph 1 of Part A of the Second Schedule to the Courts Ordinance, 1948. Although the phrase "Crown Office proceedings" has no direct application here, the proceedings are of the same nature as these, and are *sui generis*. In the circumstances, I think the procedure evolved in England before the matter was subject to statutory Rules of Court is *prima facie* the correct procedure here, and I was therefore of opinion that the procedure adopted

in this case is correct. I was fortified in that view by Criminal Miscellaneous Application No: 7 of 1948, *Re Straits Times Press Ltd.*<sup>(1)</sup>, where substantially the same procedure was adopted on a contempt application, but it appears that in that case the respondent was served before the application for rule *nisi*, which, with respect, I think was wrong. On the *ex parte* application in this case, counsel who later appeared for the respondents was watching the proceedings on their behalf, and on the hearing *inter partes* at a later date he expressed the view that the procedure adopted was correct. A further question was raised on the *ex parte* application, whether in this country the High Court will act in aid of the Subordinate Courts in the manner laid down in *R. v. Davies*<sup>(2)</sup>. The basis of the jurisdiction in England appears to be that the Subordinate Court itself can only punish contempts committed in face of the Court, and, as contempts of the kind now in question are not committed in face of the Court, the High Court steps in. It seems possible that in view of paragraph 24 of the new Third Schedule to the Courts Ordinance, 1948, and Order 38 of the Subordinate Courts Rules, which together give Subordinate Courts powers to punish contempts committed either *in facie* or *ex facie* in connection with civil matters, the High Court would not in such a case step in to act in aid; but as regards contempts in connection with criminal matters, section 353 of the Criminal Procedure Code appears to apply, and this only gives power to punish if the contempt is committed *in facie*. I was, therefore, of the opinion that in this case, since the contempt was committed *ex facie* and in relation to an impending criminal proceeding, the principle of *R. v. Davies*<sup>(2)</sup> would apply, and the High Court should step in. This point was conceded at the hearing *inter partes*.

The respondents filed affidavits which in substance raised a defence of law and a defence on the facts. They first contended that publication of matter intended, or calculated, to prejudice a future trial cannot in law amount to contempt of Court, unless proceedings are "pending" in the sense that, if the proceedings are criminal, process by summons or warrant has been issued or an arrest has been made, or, if the proceedings are civil, a writ has been issued or a plaint filed. As these were criminal proceedings, nothing which I have to say in this case should be taken as in any way affecting pending or imminent civil proceedings. I am concerned only with criminal proceedings, and my decision applies to them only.

The case for the respondents was simply that there is no precedent in any reported case for proceedings such as these in the case of a publication "where no

person has been officially accused of an offence". Mr. Woodward stressed this phrase, and it fairly describes the present state of the authorities. The case of *Reg. v. O'Dogherty*<sup>(3)</sup>, was cited to me and, if the headnote alone were considered, it might appear to be some authority against Mr. Woodward's proposition. I think, however, on reading the whole case that the headnote, if it bears that meaning, is wrong, and that the case goes no farther than the English authorities to which I shall refer. So far as I am aware, Mr. Woodward's proposition is perfectly correct; but it is also correct, I think, to say that there is no reported decision that contempt proceedings can *not* be based on a publication before any person has been officially accused of an offence. Mr. Woodward suggested that it was so held in *Porter v. R.*<sup>(4)</sup>, an Australian case noted in the English and Empire Digest Supplement for 1941, but I do not think the note there given supports his view.

The modern history of the law governing this matter begins with *R. v. Parke*<sup>(5)</sup>. There a person had been charged before the petty sessions with an indictable offence triable only at assizes. It was contended that a contempt of this kind could only arise after committal for trial. The Court, consisting of Lord Alverstone, C.J. and Wills and Channell, JJ., held that a contempt had been committed. Wills, J., delivering the judgment of the Court, dealt incidentally with a point which I myself raised in the course of argument on this application. It occurred to me that in this case criminal proceedings for defamation under Chapter XXI of the Penal Code might have been brought, and that the existence of an alternative form of criminal proceeding, by which this mischief might be remedied, might be an argument against the extension of contempt proceedings beyond the limits for which there is now direct authority. The same point was taken in *R. v. Parke*<sup>(5)</sup> with regard to a possible remedy by criminal information or indictment. The Court held that the possible existence of such an alternative remedy was no ground for refusing to extend the scope of contempt proceedings. The following passage, taken from the judgment of Wills, J., at pp. 436—438 is of fundamental importance.

"A moment's consideration, it seems to us, is sufficient to dispose of such a proposition. The reason why the publication of articles like those with which we have to deal is treated as a contempt of Court is because their tendency and sometimes their object is to deprive the Court of the power of doing that which is the end for which it exists—namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it. Their tendency is to reduce the Court which has to try the case to impotence, so far as the effectual elimination of prejudice and prepossession is concerned. It is difficult to conceive an apter description

of such conduct than is conveyed by the expression "contempt of Court." If it be once grasped that such is the nature of the offence, what possible difference can it make whether the particular Court which is thus sought to be deprived of its independence, and its power of effecting the great end for which it is created, be at that moment in session or even actually constituted or not? It is perfectly certain that by law it will and must be constituted, and that when constituted it and it alone can take cognizance of the particular offence which is the subject of the preliminary inquiry. The wrong can hardly be the less because the purpose or the tendency of the act complained of is that the Assize Court never shall have undisturbed power to fulfil its functions satisfactorily. The High Court exists always. To provide beforehand that one of its branches which, although it does not at the moment exist, yet must, both according to immemorial custom, and now also by statutes and rules having the same effect, come into existence, shall be hampered and hindered in the effectual discharge of its duties as soon as it is constituted, if called upon to try a particular case which it is at all events proposed to bring into that Court, is surely an offence against the High Court itself.

Looking, therefore, to the principles upon which this jurisdiction rests, and to the mischief to prevent which it exists, we can have no doubt that it is properly invoked in the present case.

Great stress has been laid by Mr. Danckwerts upon an expression which has been used in the judgments upon questions of this kind — that the remedy exists when there is a cause pending in the Court. We think undue importance has been attached to it. It is true that in very nearly all the cases which have arisen there has been a cause actually begun, so that the expression, quite natural under the circumstances, accentuates the fact, not that the case has been begun, but that it is not at an end. That is the cardinal consideration. It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased."

The latter part of this passage, though in a sense *obiter*, clearly lays down a general principle. It has been referred to on various occasions since that date, notably in the case of *R. v. Daily Mirror & Ors. ex p. Smith*<sup>(6)</sup>. There the Court was being asked to extend the then known range of contempt proceedings by holding that it was contempt of Court in a newspaper to publish the photograph of a person charged with a criminal offence, where it was reasonably clear that the question of his identity had arisen or might arise. Lord Hewart, C.J., quoted the words of Lord Russell laying down the general principle that "the applicant must show that something has been published which either is clearly intended, or at least is calculated, to prejudice a trial which is pending." He then went on to indicate how a photograph might be within this principle, and referred to the question of the time of publication. He then proceeded, at p. 851, as follows:—

"Some matters were discussed during the argument which do not strictly arise here. We are not called upon to consider the question whether there may be contempt of court when proceedings are imminent but have not yet been launched. In the present case the question did not arise, for there was a charge and there had been an arrest, and proceedings therefore had begun. Some day that question may have to be decided, and for the moment I will only refer to a passage in the judgment of the Court, consisting of Lord Alverstone C.J., Wills and Channell JJ., delivered by Wills J. in *Rex v. Parke*:

'Great stress has been laid by Mr. Danckwerts upon an expression which has been used in the judgments upon questions of this kind—that the remedy exists when there is a cause pending in the Court. We think undue importance has been attached to it. It is true that in very nearly all the cases which have arisen there has been a cause actually begun, so that the expression, quite natural under the circumstances, accentuates the fact, not that the case has been begun, but that it is not at an end. That is the cardinal consideration. It is possible very effectively to poison the fountain of justice, before it begins to flow. It is not possible to do so when the stream has ceased.' But as I have said, that case does not arise here."

Avory, J., agreed with the Lord Chief Justice, and Talbot, J., said:—

"I have had grave doubts whether the facts here call for the exercise of our jurisdiction. On the whole I am prepared to concur in the judgment just delivered, understanding as I do that it is dealing only with the question in relation to proceedings actually pending."

I do not think it is necessary to consider whether Lord Hewart was quoting the judgment of Wills, J., with actual approval, or whether he merely considered it a passage of importance which must not be lost sight of on a future occasion when the facts postulated might arise. I do not think that the words of Talbot, J., can be taken as more than an expression of his intention not to commit himself on a question not then before the Court. I have referred to *R. v. Davies*<sup>(2)</sup>, where the High Court affirmed its jurisdiction to protect subordinate Courts from contempt. I would mention shortly *R. v. Clarke & Anor., ex p. Crippen*<sup>(7)</sup>, where it was first held that proceedings need have gone no farther than warrant and arrest; *R. v. "Evening Standard" & Ors., ex p. Director of Public Prosecution*<sup>(8)</sup> where it was held contempt to embark on private investigations and publish the results after arrest, and which also is an example of proceedings being initiated by the prosecuting authority itself, and not the accused person; and *R. v. Hutchison & Ors., ex p. McMahon*<sup>(9)</sup> where publication of a film was held to be contempt. In *R. v. Davies, ex parte Delbert-Evans*<sup>(10)</sup>, Humphreys and Oliver, JJ., held that a contempt could be committed by publication after the judgment of the High Court but within the period during which the condemned person might give notice of appeal to the Court of Criminal Appeal, and apparently notwithstanding that such notice had not been given at the time of the publication. It does not appear from the report whether the notice had been given before or after publication, but the Court apparently did not think that that distinction was material. See the opening sentence of the judgment of Humphreys, J., at p. 438.

All these cases seem to me to serve as authority for the proposition that the Courts have extended and will extend the known scope of the doctrine of

contempt of Court in accordance with general principles, and without regard for the fact that proceedings of the exact nature in question have never previously been taken. Apart from that more general proposition, however, I think that *R. v. Davies, ex parte Delbert-Evans*<sup>(10)</sup> is of direct application here as showing that proceedings may be "pending" in law for the purpose of contempt, although they are not pending in the ordinary sense of the word. It is hard to say in the ordinary sense that an appeal can be "pending" at a time when it is not certain whether there will ever be an appeal or not. There was undoubtedly a right of appeal, but to hold that the existence of that right constituted a pending proceeding seems to me a very special use of language. Humphreys, J., apparently deprecated, as Wills, J., had done long before, the use of the word "pending", and preferred to speak of the proceedings being still *sub judice*. He said at p. 444,

"It is very much better that editors of newspapers should wait until a case is finally over before making any observations they desire to make about it, and I think a criminal case may be said to be finally over when the Court of Criminal Appeal has heard and determined the appeal, if any. After that time they are in no peril of being dealt with for contempt of Court."

Oliver, J., said,

"In my view, on the authorities, contempt of Court can be committed at any time until the case is ended".

Both judges appear to have relied strongly on the dicta of Wills, J., which I have quoted, though admittedly they applied them in connection with the end, not the beginning of proceedings, and their own dicta referred to the same point.

I do not think that too much weight should be given to Mr. Woodward's argument that because no case of this kind has apparently been brought before, it must be assumed that no such proceedings would lie. The local case law on contempt of Court is scanty. In England crimes of sufficient importance to attract the attention of the newspapers are normally first heard of only after the proceedings have been launched, and in most cases after an accused person has been arrested. Thus the opportunity to comment before the actual issue of process does not often arise. In special cases, where public interest in a crime is considerable, but no prosecution has yet been launched, press comment is nowadays always exceedingly cautious, and I have little doubt that as a rule of practice the press assumes that a contempt could be committed in such circumstances.

Acting on the general principle laid down by Wills, J., remarking the importance which has clearly been attached to his words by Courts at subsequent times, and relying to some extent on the special principle which I derive from *R. v. Davies, ex parte*

*Delbert-Evans*<sup>(10)</sup>, I am of opinion that I have jurisdiction in this matter, and to refuse it would be both contrary to principle and a failure to protect the legitimate interests of Muniandy and of the Subordinate Court itself.

I do not propose to discuss the precise meaning of the word "imminent" or the general question how far matters must have gone, after an offence is committed and before criminal process has issued, to render published comment punishable as contempt of Court. I hold that in the circumstances of this case, where it was known at the time of publication that police investigation was proceeding and that a prosecution was, at the very least, under consideration, and where the prosecution followed in the normal course, proceedings were imminent and publication of matter intended or calculated to prejudice the course of those proceedings could be contempt of Court.

On the same question of law I would add that, if it were held that a contempt could not be committed in these circumstances the results to the community would be grave. It would be an open invitation to the less responsible elements of the press to publish as many and as prejudicial comments as possible before process could be issued in any case, public prejudice of the worst kind would be aroused, and the fountain of justice might indeed be poisoned before it began to flow.

I proceed to consider the answer of the respondents on the facts. Their counsel went so far as to concede that, if publication had taken place after the commencement of proceedings, the article might have amounted to contempt, but I have still to consider the matters raised in their affidavits. They stated that their object in publishing the report was "to call the attention of the public to the views of the Kampong Bharu U.M.N.O. Branch Committee relative to the need for traffic control at the Princes Road Malay School, and in fact at all schools with premises abutting on to the public highway." They further stated that "it was not intended by the publication in any way to interfere with or to prejudice the administration of justice by any Court in connection with the said accident." I am not prepared to accept these statements at their face value. The provision of special traffic control may have been one of the issues before the U.M.N.O. Committee, but it is clear that their proceedings, if correctly reported, went far beyond that point. The allegation that Muniandy was driving at an illegally high speed, the allegation that he caused the accident by such speed, the allegation that brake marks on the road showed the speed to be excessive, the allegation that the position of the car

at the time of the accident was right across the road, and the allegation that the driver was driving the car without regard to traffic laws, all appear to have been made with the direct object of forcing on a prosecution of Muniandy, and of ensuring, so far as possible, that he should be held criminally responsible for the accident. Such remarks were in no way necessary for a discussion of the question of special traffic control at schools, and I do not accept that they were made for that purpose. The persons responsible for publication of those remarks must, in my view, be held responsible in law as intending the natural consequences of their acts. Even if the words used were not consciously intended to affect the course of proceedings then imminent, it is clear that they were calculated to do so, and the respondents must have been well aware of this.

It seems clear that the publication of such remarks must have been extremely embarrassing to the authorities whose duty it was to decide whether criminal proceedings should be launched against Muniandy, though that alone would not give rise to contempt; but it would also be exceedingly embarrassing to the Magistrate who was later to try the case. It has been suggested that, where the case will be tried by a Judge or Magistrate alone, he cannot be affected by outside influence, and therefore the publication will not tend to affect the due administration of justice. This point also is dealt with in *R. v. Davies, ex parte Delbert-Evans*<sup>(10)</sup>, where Humphreys, J., at p. 442 said:—

"I think it is a fallacy to say or to assume that the presiding judge is a person who cannot be affected by outside information. He is a human being, and while I do not suggest that it is likely that any judge, as the result of information which had been improperly conveyed to him, would give a decision which otherwise he would not have given, it is embarrassing to a judge that he should be informed of matters which he would much rather not hear and which make it much more difficult for him to do his duty. To repeat the words I have already read from the judgment of Wills J. in *Rex v. Parke*. 'The reason why the publication of articles like those with which we have to deal is treated as a contempt of court is because their tendency and sometimes their object is to deprive the court of the power of doing that which is the end for which it exists—namely, to administer justice duly, impartially, and with reference solely to the facts judicially brought before it.'"

I kept in mind the rule laid down in *Reg. v. Payne*<sup>(11)</sup>, that this jurisdiction ought only to be invoked in clear cases and on serious grounds, and I made full allowance for the fact that an apology had been offered, and submission made, but I thought this contempt was a serious one, and although the learned Deputy Public Prosecutor would have been satisfied if the rule *nisi* had been discharged on payment of costs, I felt that this would not meet the case. Were it not for the possibility that the respondents may have

believed, though wrongly, that publication at that time could not amount to contempt, the fines would have been heavy and I should have considered seriously whether the editor ought not to be imprisoned.

**Re WEE SWEE HOON, DECD.;  
LIM AH MOY & ANOR. v. ONG ENG SAY.**

[O. C. J. (Brown, J.) May 14, 1953]

[Singapore — Suit No. 1535 of 1952]

*Evidence — Cross-examination — Court's discretion to allow a party to cross-examine his own witness — Distinction between the law in this country and the law in England.*

When a witness has given an answer or answers, which the party calling him knows to be in conflict with some statement or evidence which he has previously made or given, the proper procedure is for counsel then to ask him whether he made a statement (or gave evidence) at a certain place on a certain date. Having heard his answer (whatever it may be) no further questions should be put at that stage. But counsel should then hand to the Judge the statement (or record of the evidence), and apply for leave to cross-examine him under the provisions of section 155 of the Evidence Ordinance. The Judge, having given the other side an opportunity of seeing the document and making his submissions on the application, will then give his ruling.

**ACTION.**

The facts were that the deceased's Morris car was involved in a collision with the defendant's lorry. The plaintiff's case was that the deceased was travelling on his proper side of the road and that the defendant's lorry was on his wrong side of the road and that in order to escape and try to avoid a head-on collision the deceased went across to his right-hand side. The defendant's case was that he was driving his lorry on the crown of the road, and that the deceased was overtaking another car; that he (the defendant) moved over to his left, and that the deceased came over to his wrong side of the road and collided.

The defendant called the syce who was driving the car which defendant alleged was being overtaken by the deceased. This witness had given evidence at the Police Court, where it was considered that his evidence had been favourable to the defendant. In examination in chief by defendant's Counsel he stated that the Morris was on its left side of the road and did not go over to its wrong side. He was asked if he had given evidence in the Police Court proceedings; and on his replying that he had he was asked various questions what he had said. Counsel for the plaintiffs objected.

*Denis Murphy* for the plaintiffs.

*L. A. J. Smith* for the defendant.